



C.M.S.A.No.84 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 27.10.2022

CORAM:

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.M.S.A.No.84 of 2021**

T. Madu Babu

... Appellant/Respondent

Vs.

Renuga

... Respondent/Petitioner

**Prayer:** Civil Miscellaneous Second Appeal is filed under Section 100 of the Code of Civil Procedure read with 13(1) (1B) of the Hindu Marriage Act to set aside the Order and Decree passed by the learned Additional District Judge, FTC, Vellore, in HMCMA.No.12 of 2018 dated 03.03.2021 reversing the Fair and Decree dated 08.09.2016 in H.M.O.P.No.64 of 2008 passed by the learned Subordinate Judge, Gudiyattam, Vellore.



C.M.S.A.No.84 of 2021

For Appellant : Ms.Rita Chandrasekar  
for Mr.Jayesh B.Dolia

For Respondent : Mr.M.Kamaraj  
- No appearance

### **JUDGMENT**

The petitioner before the learned Subordinate Judge, Gudiyattam, Vellore, in H.M.O.P.No.64 of 2008 is the appellant before this Court.

2.The appellant is the husband and the respondent is the wife. H.M.O.P.No.64 of 2008 was filed by the appellant herein for divorce on the ground of desertion. It is his case that the marriage between the two has been solemnized on 07.02.2000 as per Hindu rites and customs. At the time of marriage, the appellant was working in the Police Department and was deputed in the Special Task Force, Sathyamangalam. It is the case of the appellant that since he was in a very sensitive post at that point of time he had left the respondent at her parental home. Out of wedlock, they had a daughter, namely, Divya



C.M.S.A.No.84 of 2021

Dharshini who was aged about 7 years at the time of filing of the petition. The appellant would submit that after concluding his mission successfully after the capture of the forest brigand, Veerappan he had been posted in the Law and Order Department at Thiruvallur Town Police Station as Head Constable. Thereafter, the appellant and the respondent started living together. In the course of marital life, some misunderstandings arose between the two which forced the respondent to be away from the appellant and settled in her parental home. In spite of requests made by the appellant and his family elders, the respondent vehemently refused to live together with the appellant. From the month of June 2006, she has voluntarily and willfully avoided to live with the petitioner and she was for the past two years living at her parental home. Therefore, the appellant had approached the respondent seeking for divorce and they had executed a Deed dated 01.09.2008 wherein the respondent had received a sum of Rs.50,000/- and jeweleries weighing 19 sovereigns from the appellant and she had relinquished all her future claims for maintenance and all other rights of the properties.



C.M.S.A.No.84 of 2021

The appellant had also issued a Legal Notice dated 04.09.2008 which was received by the respondent, however, no reply had been sent. Therefore, he had come forward with the petition to dissolve their marriage.

3.The respondent had filed a counter denying all the allegations contained in the petition and she has stated that it was the cruelty and the harassment of the appellant which had forced her to live away from her matrimonial home under the shadow of her father. The appellant had never taken care of the family. Earlier the appellant had filed a divorce petition which he had not pressed and the present petition appears to be an attempt to threaten and to blackmail the respondent.

4.Before the learned Subordinate Judge, Gudiyattam, Vellore, the appellant had examined himself as PW1 and marked Ex.P.1 to Ex.P.6. On the side of the respondent, she had examined herself as PW1 and marked Ex.R1 to R5. The learned Subordinate Judge by a Judgment



C.M.S.A.No.84 of 2021

and Decree dated 08.09.2014 was pleased to allow the petition.

Challenging the said Judgment, the respondent had filed H.M.O.P.No.12 of 20018 on the file of the learned Additional District Judge, (FTC), Vellore. The learned Judge by her order dated 03.03.2021 was pleased to allow the appeal and set aside the Judgment and Decree of the trial Court. The learned District Judge had heavily relied upon the admissions of the appellant in his cross examination to come to the conclusion that the appellant had failed to prove desertion. That apart, it had come to light that even pending the proceedings, the appellant had remarried one Janani through which he had a daughter, namely, Kundavi. The learned Judge had stated that the Trial Court has overlooked this aberration of the appellant who is a Law Enforcement Officer. Ultimately, the learned Judge proceeded to allow the appeal. Challenging the said Judgment and Decree, the appellant is before this Court.



C.M.S.A.No.84 of 2021

WEB COPY 5.This Appeal was admitted on the following Substantial

Questions of Law:

*“(i)Whether the Appellate Court was right in disposing an appeal without framing appropriate points for determination as required under Order 41 Rule 31 of C.P.C. ?*

*(ii) Whether the Appellate Court was right in reversing the findings of the Trial Court without independently examining the evidence on record?*

*(iii) Whether the Appellate Court was right in interfering with the judgment and decree of the Trial Court without assigning any reason as to why it is not able to agree with the conclusions of the Trial Court on the evidence?”*



C.M.S.A.No.84 of 2021

WEB COPY

6. Heard the learned counsels appearing on either side and perused the papers.

7. The appellant has come forward with a petition seeking for divorce on the ground of desertion. The appellant would himself state that till such time as he was involved in the operation for catching the forest brigand Veerappan he had left the respondent at her parental home and it was only in the year 2004, the husband and wife has started living together after he has posted in the Thiruvallur Police Station, in his petition, he would state that some difference of opinion arisen between the parties leading to the misunderstanding. In fact in the petition at Para 4, the appellant by a slip of a tongue had made the following statements:

*“4.....When the petitioner and the respondent were living in Thiruvallur, some difference of opinions and misunderstanding have been arose between the petitioner*



WEB COPY

*and the respondent, which forced the respondent to be away from the petitioner and to settle in her parental home...”*

8.By making the above statement, the appellant had himself stated that the petitioner was forced to live away from the matrimonial home only owing to certain difference of opinion. He has not stated that she is willfully deserted the matrimonial home. The Appellate Court has independently considered the oral evidence of the parties as well as the documentary evidence. During the Course of his cross examination as PW1, the appellant had stated that the petitioner would admit that he had earlier filed a petition for restitution of conjugal rights in H.M.O.P. No.27 of 2003 which was ultimately dismissed for default. He has also admitted that he has married another woman by name Janani. This admission would itself provide justification for the respondent to live away from her matrimonial home. They have also admitted that there was complaint pending against him for having



C.M.S.A.No.84 of 2021

WEB COPY

treated the appellant with the cruelty. In the complaint lodged by the petitioner before the Police, the respondent had contended that the appellant had tried to pull away the Thali from the respondent. Ex.R.2 is the complaint given by the father. Ex.R.3 is the complaint lodged by the respondent once again wherein she has clearly stated that she was unable to bear the atrocities of her husband. She had stated that on 12.05.2007 at about 03.00p.m., she had been assaulted by her husband and he had also attempted to snatch her Thali and left. Therefore, there is ample reasons/justifications for the respondent to live away from her husband. The Lower Appellate Court has also taken into account the categoric statements of the respondent that he will not be able to live along with the respondent since he is already married another woman. In fact, this would only go to show that it is the appellant who has abandoned the respondent by remarrying another woman and it is definitely a justifiable ground to the wife to remain away from him. Further, as pointed out earlier, even in his petition filed for divorce the petitioner had inadvertently stated that the respondent was forced to



C.M.S.A.No.84 of 2021

live away from the appellant. Though the learned District Judge had framed only one issue as to whether the appeal has to be allowed, however, a reading of the Judgment would clearly show that the appellant has considered in detail both the contentions of the parties, the evidence and given a finding for the same. The Appellate Court has also given reasons for reversing the Judgment and Decree of the trial Court. Therefore, I see no reason to interfere with the Judgment and Decree of the learned Additional District Judge, FTC, Vellore, in HMCMA.No.12 of 2018. The Substantial Questions of Law are answered against the appellant.

In the result, this Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.10.2022

Index : Yes/No  
Internet : Yes/No  
Speaking order / Non speaking order  
mps



C.M.S.A.No.84 of 2021

WEB COPY

To

1.The Additional District Judge, (FTC),  
Vellore.

2.The Subordinate Judge,  
Gudiyattam,  
Vellore.



WEB COPY



C.M.S.A.No.84 of 2021

**P.T. ASHA, J,**

mps

**C.M.S.A.No.84 of 2021**

27.10.2022